



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Mr. Kevin Croteau  
c/o Debra Croteau  
4 Jay Court  
Raymond, NH 03077

Re: Lot #31, Tax Map U14

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
NO. AF 2000-062**

**September 25, 2000**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Kevin Croteau, pursuant to RSA 483-B:18 and Env-C 601.05. The Division is proposing that fines totaling \$10,000 be imposed against Kevin Croteau for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Kevin Croteau is an individual whose mailing address is c/o of Debra Croteau, 4 Jay Court, Raymond, NH 03077.

**III. Summary of Facts and Law Supporting Claim(s)**

1. RSA 483-B:18 authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$5,000 per offense for violations of RSA 483-B and rules adopted pursuant to thereto.
2. The Commissioner has adopted Env-C 61 to establish the schedule of fines for violations of RSA 483-B.
3. Kevin Croteau is the owner of land located on West Shore Road, Winona Lake, New Hampton, identified on New Hampton Tax Map U14 as Lot #31 ("the Property"). The Property has approximately 200 feet of frontage on Lake Winona. The area that was cleared in violation of RSA 483-B, as detailed below, was approximately 116 feet.
4. The land surrounding Winona Lake is protected by the provisions of RSA 483-B, and in particular by RSA 483-B:9, V(a)(1) which requires a natural woodland buffer to be maintained within 150 feet of the reference line of the lake.

5. In September 1999, the Division received a call from a logger who had been hired by Kevin Croteau to cut trees on the Property. The logger was familiar with the Shoreland Protection Act and was concerned that the extent of tree cutting Mr. Croteau wanted exceeded the amount allowed pursuant to RSA 483-B.
6. Division personnel inspected and evaluated the Property to determine the extent of tree cutting that could be conducted in accordance with RSA 483-B. The Division sent a letter to Mr. Croteau dated September 27, 1999, which outlined the allowable limits for tree cutting on the Property.
7. On April 3, 2000, the Division was notified by the Town of New Hampton that the Town had been notified that trees on the Property had been cut.
8. On April 6, 2000, a member of the New Hampton Conservation Commission informed the Division that most of the trees on the Property, including all of the large white pine trees, had been cut.
9. On April 21, 2000, Division personnel inspected the Property and observed the following
  - a. Within the natural woodland buffer of the protected shoreland, a healthy, well-distributed stand of trees, saplings, and ground covers had not been left in place
  - b. More than 50 percent of the basal area of trees had been removed
  - c. No erosion and siltation control measures were in place.
  - d. A docking structure was observed which does not conform to the shape and dimension requirements for permissible structures specified in Wt 100 - 700, the rules adopted pursuant to RSA 482-A.
10. A review of DES records subsequent to the inspection revealed that there is no record of a permit being applied for or issued by DES for a dock at the Property.
11. On May 31, 2000, the Division issued a Notice of Findings to Mr. Croteau, explaining the deficiencies noted from the inspection on April 21, 2000.
12. RSA 483-B:9, V(a)(2)(A) requires that, "[n]ot more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level."
13. RSA 483-B:9, V(c)(1) requires that, "[a]ll new structures within protected shoreland shall be designed and constructed in accordance with rules adopted by [DES] pursuant to RSA

541-A, relative to terrain alteration under RSA 485-A:17, for controlling erosion and siltation of public waters, during and after construction.”

14. RSA 483-B:6, I(b) requires any person intending to “[c]onstruct a water dependent structure, alter the bank, or construct or replenish a beach [to] obtain approval and all necessary permits pursuant to RSA 482-A.”

#### **IV. Violations Alleged**

Kevin Croteau violated RSA 483-B:9, V(2)(A) by not leaving a healthy, well-distributed stand of trees, saplings, shrubs and ground covers in place on the Property.

2. Kevin Croteau violated RSA 483-B:9, V(2)(A) by removing more than 50 percent of the basal area of the trees on the Property.
3. Kevin Croteau violated RSA 483-B:9, V(c)(1) by failing to have erosion controls in place during earth moving activities and while soils on the Property were disturbed and unstable.
4. Kevin Croteau violated RSA 483-B:6, I(b) by constructing a permanent dock with 2 slips at the Property without the required permit.

#### **V. Proposed Administrative Fines**

For the violation identified in IV.1. above, Env-C 611.06 (c)(1) specifies a fine of \$4,000 per 150 feet of frontage or portion thereof. The Division is seeking a fine of \$4,000.

2. For the violation identified in IV.2. above, Env-C 611.06 (d)(1) specifies a fine of \$4,000 per 150 feet of frontage or portion thereof. The Division is seeking a fine of \$4,000.
3. For the violation identified in IV.3. above, Env-C 603.02(i) specifies a fine of \$1,000.
4. For the violation identified in IV.4. above, Env-C 614.03(d) specifies a fine of \$1,000.

**The total fine being sought is \$10,000.**

#### **VI. Hearing, Required Response**

You have the right to a hearing to contest the Division’s allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, October 30, 2000 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

**Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no**

**later than October 18, 2000**, using the enclosed form as follows

If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.

2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If you wish to have a hearing but are unable to attend as scheduled**, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

## **VII. Determination of Liability for Administrative Fines**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence? means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violation(s) and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

- The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

\*\*\*\*\***IMPORTANT NOTICE**\*\*\*\*\*

**The hearing that has been scheduled is a formal hearing.** The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed.

**The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

**COPY** 

for Harry T. Stewart, Director  
Water Division

Enclosure (NHDES Fact Sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator  
Susan Alexant, DES Hearings and Rules Attorney  
Allyson Gourley, DES/WD/Shoreland Protection

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**APPEARANCE**

I/we will attend the hearing scheduled for **Monday, October 30, 2000 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

**WAIVER OF HEARING**

I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$10,000 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

James Ballentine, DES Enforcement Paralegal  
Department of Environmental Services  
6 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095